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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

MONTANA WILDERNESS  
ASSOCIATION, et al.

Plaintiffs,

vs.

UNITED STATES FOREST SERVICE, et  
al.

Defendants,

BLUE RIBBON COALITION, INC. et al.

Defendant-Intervenors,

MIDDLE FORK HOMEOWNERS  
ASSOC.,

Defendant-Intervenors.

No. CV-96-152-M-DWM

**AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

*COMES NOW*, the Plaintiffs, and allege as follows:

### **PRELIMINARY STATEMENT**

This is an action for a Declaratory Judgment and for Injunctive Relief. Executive Order 11644, promulgated in 1972, and 36 C.F.R. part 295, enacted in 1978, govern the management of off-road vehicle (ORV) use on National Forests and impose a mandatory duty to timely designate trails and areas for appropriate recreational uses, considering adverse impacts to resources and conflicts with other recreationists often caused by ORVs. In 1977, Congress passed the Montana Wilderness Study Act (MWSA) of 1977, P.L. 95-150, 91 Stat. 1243 (1977), which requires the Forest Service to manage nine Wilderness Study Areas (WSAs) so as to maintain their wilderness character and potential for inclusion as wilderness in the National Wilderness Preservation System. Though over two decades have elapsed since the Executive Order, regulations and the MWSA was passed, the Forest Service has failed to designate trails and areas within the WSAs for appropriate uses. As a result of the agency's failure to act, ORV use has become rampant within the WSAs, degrading their wilderness character, in derogation of the MWSA. The Forest Service's failures to take legally required actions to manage ORV use in WSAs by designating trails and areas within those areas constitutes agency action unlawfully withheld or unreasonably delayed in violation of the Administrative Procedure Act, 5 U.S.C. § 706 (1).

In addition, the Forest Service has, on occasion, taken discrete acts such as approving snowmobile grooming, and trail construction projects within WSAs. These actions run afoul of the agency's duty to maintain the wilderness character of the WSAs because they destroy wilderness attributes of these areas - the same attributes that Congress found when it designated these areas as WSAs. These acts constitute final agency actions, reviewable under APA 5

U.S.C. 706 (2). These actions violate the APA and the MWSA because they are arbitrary, capricious and an abuse of discretion. In addition, also reviewable under the APA, are Plaintiffs' claims that the agency has violated the National Environmental Policy Act and National Forest Management Act based upon site-specific actions in WSAs that do not comport with these statutes.

This amended complaint follows the remand from both the U. S. Supreme Court and the Ninth Circuit following the Supreme Court's June, 2004 decision in *Norton v. Southern Utah Wilderness Society*, – U.S. – (2004). As in the original complaint, Plaintiffs allege violations of the MWSA and the Administrative Procedure Act, 5 U.S.C. 706 (1) and (2).

### **JURISDICTION AND VENUE**

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States) and the APA, 5 U.S.C. §706. This court may issue a declaratory judgment and further relief pursuant to 28 U.S.C. § 2201 and 2202. Mandamus may lie pursuant to 28 U.S.C. § 1361. There is a real, present and continuing controversy between the parties. In addition, the Plaintiffs may not have an adequate remedy at law, and injunctive relief is appropriate.

2. Venue lies in the Missoula Division of the United States District of Montana pursuant to 28 U.S.C. 1391(e) in that portions of the National Forests at issue here (subject property) are located within Ravalli County and Lincoln County, Montana within the Missoula Division of the District Court for the State of Montana. The Defendant Regional Forester resides in Missoula County, within the Missoula Division. All National Forest Lands within the

auspices of this complaint are administered by the Northern Region of the National Forest System headquartered in Missoula, Montana.

### **PARTIES**

3. Plaintiff Montana Wilderness Association is a Montana non-profit corporation headquartered in Helena, Montana. Plaintiff American Wildlands is a Colorado non-profit corporation with a field office in Bozeman, Montana. Plaintiff Friends of the Bitterroot Inc. is a Montana non-profit corporation with headquarters in Hamilton, Montana. Each organization has a long-standing interest in the protection of wilderness, wildlife and wildland resources of the National Forest System in Montana including the WSAs at issue in this complaint. Members and employees of each organization regularly use the WSAs at issue in this complaint for recreational and aesthetic pursuits, including but not limited to fishing, skiing, hiking, wildlife appreciation, wilderness solitude and aesthetic enjoyment. Members and employees of each organization have used and will continue in the future to use each of the WSAs at issue in this complaint. Their present and future use of the WSAs and their recreational and aesthetic enjoyment of each WSA have been and will continue to be impaired as a result of the actions and failures to act of the Defendants described herein. In addition, the organizations and their members and employees have an interest in obtaining information about activities and environmental impacts in each WSA and in insuring that the Forest Service complies with all laws pertaining to the management of public lands. This suit is brought on behalf of these organizations and their members and employees who are directly and adversely affected by the matters at issue herein.

4. Defendant United States Forest Service is an administrative agency within the United States Department of Agriculture and is responsible for managing lands in the National Forest System, including the WSA's. Defendant Dale Bosworth is the Chief of the U. S. Forest Service, and the official responsible for implementing Forest Service direction. He is sued in his official capacity. Defendant Abigail Kimball is the Regional Forester for Region One of the National Forest System which includes the WSA's in Montana. She is sued in her official capacity.

### **GENERAL ALLEGATIONS**

5. In 1964 Congress passed the Wilderness Act, 16 U.S.C. §1131 *et. seq.* At that time, Congress set aside certain federal lands as part of the National Wilderness Preservation System. Such lands, by definition, "retain their primeval character ... without permanent improvements... managed so as to preserve its natural conditions... with the imprint of man's work substantially unnoticeable and have outstanding opportunities for solitude or a primitive and unconfined type of recreation ... " 16 U.S.C. §1331 (c). Congress has, from time to time added additional federal lands to the National Wilderness Preservation System. Congress has also periodically designated other federal lands as Wilderness Study Areas (WSAs), and directed the responsible land management agency to maintain the WSA's existing wilderness character and potential for inclusion in the Wilderness System.

6. Wilderness characteristics of Wilderness lands under the Wilderness Act include opportunities for solitude, opportunities for a primitive and unconfined recreation, and opportunities to experience land in its natural state, largely undisturbed by the imprint of human activity.

7. In 1977, Congress passed the Montana Wilderness Study Act (hereafter the Act) P.L. 95-150, 91 Stat. 1243, 1243-1244 (1977). The Act designates the following National Forest lands in Montana as Wilderness Study Areas :

- a. West Pioneer Wilderness Study Area, Beaverhead National Forest.
- b. Taylor - Hilgard Wilderness Study Area, Beaverhead and Gallatin National Forests.
- c. Bluejoint Wilderness Study Area, Bitterroot National Forest.
- d. Sapphire Wilderness Study Area, Bitterroot and Deerlodge National Forests.
- e. Mount Henry Wilderness Study Area, Kootenai National Forest,
- f. Ten Lakes Wilderness Study Areas, Kootenai National Forest.
- g. Middle Fork Judith Wilderness Study Area, Lewis and Clark National Forest.
- h. Big Snowies Wilderness Study Area, Lewis and Clark National Forest.
- i. Hyalite-Porcupine-Buffalo Horn Wilderness Study Area, Gallatin National Forest.

The WSAs in subparts (b) and (e) above were released from further consideration or designated as Wilderness after the passage of specific legislation by Congress. The remaining WSAs are still subject to the provisions of the Act because Congress has not acted upon them by designating them as Wilderness or releasing them from further consideration as Wilderness.

8. The Montana Wilderness Study Act requires Defendants to administer said lands "to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System." At the time the Act was passed, Congress delineated the precise acreage of each of the specific areas enumerated in paragraph 7 because

each WSA, taken as a whole, possessed wilderness characteristics that made each of them suitable for inclusion into the National Wilderness Preservation System. Each WSA contained wilderness characteristics in 1977 that included, but were not limited to, opportunities for solitude and primitive recreation, abundant native wildlife, and landscapes largely untrammelled by humans. These wilderness characteristics dominated the whole of each WSA, though limited motorized use existed in limited portions of each WSA in 1977.

9. In 1977, four-wheel All Terrain Vehicles (hereinafter ATVs) were not in use in any WSA. In 1977 non-winter motorized use in WSAs occurred from motorcycles and four wheel drive trucks or jeeps in limited areas. With very limited exceptions, motorized use of WSAs in 1977 did not infringe upon the wilderness character of WSAs. Since 1977, increased ATV use in WSAs has caused environmental damage such as soil erosion, damage to native vegetation and the spread of noxious weeds, increased recreational conflicts, which has led to the loss of and the impairment of wilderness characteristics of these WSAs including solitude, silence and the aesthetics of landscapes largely undisturbed by human activities. ATVs adversely affect wildlife, such as grizzly bears and elk, that are part of the wilderness character of WSAs by diminishing and displacing them from their habitat and by increasing human-wildlife disturbance and mortality. ATVs create user-conflicts with non-motorized recreation such as hiking, hunting, fishing and horsepacking by despoiling wilderness character with excessive noise, increased air pollution and degradation of the landscape, by detracting from the aesthetic qualities of non-motorized wilderness recreation and by posing safety conflicts. Impacts to wilderness character from noise pollution from ATVs can extend many miles beyond their immediate location. ATVs diminish hunting opportunities by allowing motorized access

into areas previously not accessed by motorized vehicles, thereby displacing wildlife and increasing hunting pressure on big game animals. All of these impacts affect the wilderness character of WSAs.

10. In 1977, very little snowmobile use occurred in any WSA and such use was confined primarily to a few accessible valley trails. Forest Service maps in 1977 show only one snowmobile trail within a WSA. Today, snowmobile use is extensive in portions of the Sapphire, Hyalite, West Pioneers, and Ten Lakes WSAs. Snowmobiles disrupt wildlife, destroy opportunities for solitude, increase human disturbances and conflict with other forms of winter recreation that are suitable for wilderness areas, such as snowshoeing and cross-country skiing. Snowmobiles diminish wilderness character by increasing noise pollution, air pollution, creating tracks that are evidence of human imprint over vast areas of the landscape, and eliminating or displacing some species of wildlife such as lynx and wolverine. Noise pollution and visual degradation of the landscape from snowmobiles can extend far beyond the travel prism for snowmobiles.

11. ATVs and snowmobiles are collectively referred to herein as Off-Road Vehicles (ORVs). As alleged with particularity in Counts I - V below, the actions and inactions of the Forest Service have led to an increase in ORVs in WSAs. The resulting increase in ORV use has damaged the wilderness characteristics of the WSAs as they existed in 1977. The Defendants have thus failed to maintain wilderness characteristics of the WSAs and have impaired their suitability for designation of as Wilderness. For each Count stated below, the actions and inactions of the Defendants have diminished the opportunities for solitude, opportunities for



primitive recreation, increased user conflicts and have despoiled the natural appearance of the WSAs at issue in this suit.

12. Executive Order 11644 imposes the following mandatory duties on the Forest Service: “Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed.”

13. Executive Order 11644 further requires that the Forest Service make the designations in the preceding paragraph as follows:

Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations further require that the designation of such areas and trails shall be in accordance with the following --

- (1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the Public lands.
- (2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.
- (3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such

issues with existing conditions in populated areas, taking into account noise and other factors.

(4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive areas. Areas and trails shall be located in areas of the National Park System, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.

14. Pursuant to Executive Order 11644, the Forest Service enacted 36 C.F.R. part 295. 36 C.F.R. § 295 imposes the following mandatory duty upon the Forest Service with respect to the management of ORVs:

(a) Off-road vehicle management plans shall provide vehicle management direction aimed at resource protection, public safety of all users, minimization of conflicts among users, and provide for diverse use and benefits of the National Forests. Designation of areas and trails shall be in accordance with the following:

(b) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(c) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(d) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to

ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

15. The Forest Service manages its road and trail network by establishing appropriate uses for each designated trail and road. Designated roads, for example, are generally open to all licensed, street-legal vehicles. Trails may be open to foot travel, horse travel, motorcycles, snowmobiles, and/or ATVs depending upon their designation, which must be based upon appropriate uses and safety considerations for each trail. All such designations must be made in accordance with E.O. 11644 and 36 C.F.R. § 295, and constitute final agency action when so made.

16. 36 C.F.R. § 295 (a) imposes upon the Forest Service a non-discretionary duty to use the continuing land management planning process to designate areas and trails for ORV use to ensure resource protection, to protect public safety of all users and to minimize conflicts among users. These regulations further impose a mandatory duty that the designation of areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands, to minimize harassment of wildlife and significant disruption of wildlife habitats, to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors. Executive Order 11644 requires that these designations be accomplished by a date certain. In order to accomplish these requirements the Forest Service must take final agency actions either through individual designations or through an off-road vehicle management plan, for each trail

and area designation in each WSA, by delineating the type of recreational use appropriate for the trail and area.

17. The duties imposed by the MWSA with respect to maintaining wilderness characteristics and suitability for wilderness designation must be carried forth in concert with the duties imposed by E.O. 11644 and 36 C.F.R. § 295. Wilderness character, opportunities for solitude, native wildlife, and non-motorized recreational opportunities without conflict from ORVs in WSAs are resources that must be protected under 36 C.F.R. 295 and E.O. 11644. 36 C.F.R. 295 and E.O. 11644 require the Forest Service to make area and trail designations that comport with the requirements of the MWSA, so that such designations maintain wilderness character and suitability for future designation as wilderness.

18. As set forth below, in the 27 years since the MWSA was enacted, the Forest Service has failed to make the designations for all such trails and areas in all of the WSAs in accordance with the mandatory requirements of 36 C.F.R. 295 and E.O. 11644. The Forest Service has not completed off road vehicle management plans for all of the WSAs in a manner consistent with the wilderness character of WSAs as they existed in 1977. The Forest Service has failed to take final agency actions within the mandatory time frames required by law. The failure to make trail and area designations in order to control ORV use in WSAs in a timely fashion constitutes agency action unlawfully withheld or unreasonably delayed in violation of the APA, 5 U.S.C. § 706 (1).

19. In addition, as set forth below, Defendants have taken final agency actions, such as issuing special use permits and undertaking road improvement projects, and such actions have failed to maintain the wilderness character of the WSAs at issue here as it existed in 1977 in

contravention of the requirements of the MWSA. These actions taken by the Defendants are therefore arbitrary, capricious and an abuse of discretion in violation of the APA, 5 U.S.C. § 706(2). Plaintiffs have no adequate remedy at law, other than this suit, and suffer irreparable harm as the allegations against the Defendants set forth herein. The actions and failures to act as alleged herein have damaged, and continue to cause damage to the wilderness character and suitability for designation as wilderness in the WSAs at issue herein. Plaintiffs have made their demands known and otherwise petitioned the Defendants who have failed to act or acted arbitrarily with respect to the management of WSAs as alleged herein. All of the allegations in paragraphs 1-19 herein are fully incorporated into Counts I-V below.

**COUNT I - 5 U.S.C. 706 (1)**

**A. Sapphire WSA.**

20. The Sapphire WSA is located within the Bitterroot and Deer Lodge National Forests astride the crest of the Sapphire Mountains. ORV use on the following trails within the WSA has caused the degradation of the wilderness character and impairment of the suitability of the WSA for wilderness designation: Trail ## 39, 313, 330, 331. Defendants have failed to act in accordance with the mandatory requirements of 36 C.F.R. § 295, Executive Order 11644 and the MWSA because they have never designated the above-cited trails in accordance with those laws. These failures to act are failures to take legally required, discrete actions and constitute administrative action unlawfully withheld or unreasonably delayed in violation of the above cited regulations, and APA 5 U.S.C. § 706 (1).

21. The Forest Service has also allowed and promoted snowmobile use in the Sapphire WSA that has resulted in significantly increased snowmobile activity since 1977.

Snowmobile use has degraded the wilderness character of this WSA and its suitability for designation as Wilderness in the following specific trails and areas: Trail # 313; Trail # 39; Trail # 330; Trail # 331; Trail # 102; Trail # 87; Frogpond Basin north to Mosquito Meadows; Moose Meadows and Coyote Meadows for approximately 10 miles along or adjacent to the divide crest, including the headwaters of Moose, Bush, Divide, S. Fork Sleeping Child and Martin Creeks. The Defendants have failed to act in accordance with the mandatory requirements of 36 C.F.R. § 295, and Executive Order 11644 by failing to designate such trails and areas for winter uses in accordance with the law. The failures to act are failures to take legally required, discrete acts and constitute administrative action unlawfully withheld or unreasonably delayed in violation of the above-cited regulations and APA 5 U.S.C. 706 (1).

B. Hyalite Porcupine Buffalo Horn.

22. The Hyalite-Porcupine-Buffalo Horn WSA (Hyalite WSA) is located on the Gallatin National Forest. ORV use on the following trails within the WSA have caused and are continuing to cause the degradation of the wilderness character of this WSA as it existed in 1977 and impairment of the suitability of this WSA for wilderness designation: Trail # 167 Rock Creek to Big Creek; Trail # 1 Buffalo Horn Pass Trail; Trail # 82 Windy Pass; Trail # 178 Rock Creek; Gallatin Crest Trail # 96; 434; Portions of Gallatin Petrified Forest. Defendants have failed to act in accordance with the requirements of 36 C.F.R. § 295, and Executive Order 11644 by failing to designate such trails in accordance with the law. These failures to act are failures to take legally required, discrete acts and constitute administrative action unlawfully withheld or unreasonably delayed in violation of the above cited regulations and APA 5 U.S.C. § 706 (1).

23. The Forest Service has also allowed and promoted snowmobile use in the Hyalite WSA that has resulted in significantly increased snowmobile activity since 1977. Snowmobile use has degraded the wilderness character of this WSA and its suitability for designation as Wilderness in the following specific areas: the Rock Creek drainage on the east side of the Gallatin Range; Windy Pass; Gallatin Crest; Onion Basin. Defendants have failed to act in accordance with the requirements of 36 C.F.R. § 295, and Executive Order 11644, by failing to designate such areas for winter motorized use in accordance with the law. The failures to act are failures to take legally required, discrete actions and constitute administrative action unlawfully withheld or unreasonably delayed in violation of the above-cited regulations and APA 5 U.S.C. § 706 (1).

C. Middle Fork Judith

24. The Middle Fork Judith WSA lies within the Lewis & Clark National Forest and provides outstanding habitat for elk and native fisheries. Plaintiff Montana Wilderness Association has resolved winter snowmobile use issues in the Middle Fork Judith with the Forest Service and those matters are no longer at issue here. However, ORV use on the following trails within the WSA has caused and is continuing to cause the degradation of the wilderness character of this WSA as it existed in 1977 and impairment of the suitability of this WSA for wilderness designation: Woodchopper Ridge Trail # 444; Middle Fork Judith Trail # 437; Coyote Peak Trail # 441; King Creek Trail # 429; unnumbered jeep trails beyond those displayed on the 1977 Travel Map. Defendants have failed to act in accordance with the requirements of 36 C.F.R. § 295 and Executive Order 11644 by failing to timely designate such trails in accordance with those regulations. These failures to act are failures to take legally

required, discrete actions and constitute administrative action unlawfully withheld or unreasonably delayed in violation of the above-cited regulations and APA 5 U.S.C. § 706 (1).

D. West Pioneer WSA.

25. The West Pioneer WSA encompasses over 150,000 acres of the Beaverhead National Forest in the Big Hole watershed. In June, 2004, the Forest Service signed an order restricting ATV use from approximately 64 miles of trails in the West Pioneer WSA that were at issue in the original complaint because they were not open to ATV use in 1977. That order constitutes recognition by the Forest Service that ATV use on trails where it did not exist in 1977 is a violation of the MWSA. That order constitutes recognition by the Forest Service that the Forest Service is obliged under 36 C.F.R. § 295, Executive Order 11644 and the MWSA to restrict ATV use on trails where it did not exist in 1977.

26. ORV use on the following trails that were not subject to the aforementioned order within the WSA have caused and are continuing to cause the degradation of the wilderness character of this WSA as it existed in 1977 and impairment of the suitability of this WSA for wilderness designation: Steel Creek Trail; Lacey Creek Trail. Defendants have failed to act in accordance with the requirements of 36 C.F.R. § 295 and Executive Order 11644 by failing to timely designate such trails in accordance with such regulations. These failures to act are failures to take legally required, discrete actions and constitute administrative action unlawfully withheld or unreasonably delayed in violation of the above-cited and APA 5 U.S.C. § 706 (1).

27. The Forest Service has also allowed and promoted snowmobile use in the West Pioneer WSA that has resulted in significantly increased snowmobile activity since 1977. Snowmobile use has degraded the wilderness character of this WSA and its suitability for



designation as Wilderness in throughout the southern half of the West Pioneer WSA.

Defendants have failed to act in accordance with the requirements of 36 C.F.R. § 295 and Executive Order 11644 MWSA by failing to timely designate such areas in accordance with these laws. The failures to act are failure to take legally required, discrete actions and constitute administrative action unlawfully withheld or unreasonably delayed in violation of the above-cited regulations and APA 5 U.S.C. § 706 (1).

E. Ten Lakes.

28. The Ten Lakes WSA lies within the Kootenai National Forest in northwestern Montana. At the time the MWSA was enacted, no snowmobile use occurred or was permitted in Ten Lakes WSA. Beginning in 1981, the Forest Service has allowed and promoted snowmobile use in the Ten Lakes that has resulted in significantly increased snowmobile activity since 1977. Snowmobile use has degraded the wilderness character of this WSA and its suitability for designation as Wilderness in the entire designated portion of the WSA. Though the Forest Service has allowed snowmobile use in the Ten Lakes WSA since 1981, it has never taken a final agency action to allow such use. Further, Defendants have failed to act in accordance with the requirements of 36 C.F.R. § 295 and Executive Order 11644 by failing to timely designate the entire Ten Lakes WSA in accordance with these regulations. This failure to act is a failure to take legally required, discrete actions and constitute administrative action unlawfully withheld or unreasonably delayed in violation of the above-cited regulations and APA 5 U.S.C. § 706 (1).

**COUNT II - NEPA.**

29. The National Environmental Policy Act (NEPA), and implementing regulations at 40 C.F.R. § 1500 et seq. require the Forest Service to prepare an Environmental Impact

Statement for major federal actions that significantly affect the environment. Where the agency is uncertain as to whether an EIS is necessary, an Environmental Assessment addressing the same factors must be prepared to see if a full EIS is needed. NEPA and its implementing regulations also require public notice and public involvement in government decision-making.

30. Any actions taken by the Forest Service that encourage, facilitate or otherwise result in increased motorized use in WSAs must be analyzed pursuant to NEPA by either preparation of an EA or an EIS. Such analysis must include, in addition to all other environmental impacts of the proposed action, an analysis of the impacts of the action on the wilderness characteristics of the WSA affected by the action.

31. The following violations of NEPA, its implementing regulations at 40 C.F.R. § 1500 et seq. have occurred in reference to Montana Wilderness Study Areas:

- a) Trail improvement and construction projects in the West Pioneers WSA.
- b) Trail improvement and construction projects in the Hyalite WSA.
- c) All Memoranda of Understanding, Special Use Permits and categorical exclusions for snowmobile grooming or other decisions within or adjacent to any WSA.
- d) Special Use Permits for motorized outfitting or grooming within or adjacent to WSAs.

32. As alleged herein, the actions and failures to act by the Forest Service violate NEPA and are further arbitrary, capricious, without observance of procedure required by law, and constitute agency action unlawfully withheld in violation of the APA 706 (1) and (2).

**COUNT III NFMA.**

33. The National Forest Management Act 16 U.S.C. § 1600 et seq., (hereafter NFMA), requires the Forest Service to implement Forest Plans for each individual National Forest. All of the National Forests that contain WSAs have Forest Plans. These Forest Plans contain Forest Plan standards. All projects must be consistent with Forest Plan Standards. Projects that are not in compliance with such standards violate NFMA.

34. The following violations of forest plans have occurred in reference to Montana Wilderness Study Areas, as follows:

- a) On the Deer Lodge National Forest, forest plan standards for non-motorized A-4 management areas are violated by the Forest's Travel Plan and by recent construction of an ORV route across the Upper Ross Fork drainage within the Sapphire WSA.
- b) On the Bitterroot National Forest, Gallatin National Forest, Lewis and Clark National Forest, Beaverhead National Forest and Kootenai National Forest Defendants have violated forest plan standards that requires that said areas be managed to protect its "wilderness character." Defendants are failing to so manage the WSA as required by Forest Plans, have acted inconsistent with their Forest Plans, as is specifically outlined above, and therefore violated the forest plans for the affected National Forests and NFMA.

35. As alleged herein, the actions of the Defendants violate NFMA, its implementing regulations, and are arbitrary and capricious in violation of APA § 706 (2).

**COUNT IV.**

36. On information and belief, defendants do not believe they are required even to consider whether there is actual impairment to the wilderness character of the WSAs as it existed in 1977, or to maintain the wilderness character of each WSA as it existed in 1977, so long as any impairment potentially can be reversed upon future designation as Wilderness under the Wilderness Act. The MWSA requires the Forest Service to maintain the wilderness character of each WSA as it existed in 1977. The agency's actions as alleged herein represent an impermissible interpretation of the explicit terms of the MWSA, thereby rendering defendants' actions as 'not in accordance with law' and therefore actionable under 706(2).

*WHEREFORE PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:*

1. Enter a declaratory judgment on Counts I through V above that the Forest Service has violated the law as alleged in each Count.
2. Enter a mandatory injunction compelling the Forest Service to designate the trails and areas alleged to be in violation of the 36 C.F.R. § 295 and Executive Order 11644 within 90 days of the Court's order.
3. Set aside as illegal all actions taken found to be arbitrary and capricious in violation of MWSA, NEPA, NFMA and the APA 5 U.S.C. § 706 (2).
4. Enter a permanent injunction preventing the Forest Service from taking any actions in any WSA that impairs the wilderness character of the area or lessens its suitability for inclusion in the Wilderness System until such time as Congress acts on all WSAs.
5. Mandate that the Forest Service take reasonable steps to restore damage that it has caused within WSAs since 1977 that may in any way impair, or be construed to impair

wilderness character and the suitability for inclusion in the National Wilderness Preservation System.

6. Award Plaintiffs their costs and attorney fees under the Equal Access for Justice Act and all other relief that the court deems just, equitable and proper under the circumstances.

DATED this 12<sup>th</sup> day of October, 2006.

/s/ Jack R. Tuholske  
TUHOLSKE LAW OFFICE PC  
Jack R. Tuholske

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing document was electronically filed and served to the following on this 12<sup>th</sup> ay of October, 2006, postage prepaid:

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